*HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+WRIT PETITION NO.20388 OF 2005

% 27th September 2005

S.Srinivasulu S/o.Janaiah

…Petitioner

And

$ The APSRTC, rep. by its Regional Manager,

Khammam & another.

…Respondents

! Counsel for the petitioner: Mr.Kowturu Vinaya Kumar

^ Counsel for respondents : Smt.P.Rajini, Standing Counsel

< Gist:

> Head Note:

? Cases referred:

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O R D E R:

Apart from plying the buses owned by it, the APSRTC hires private busses, to ply them on the routes, on which it holds permits. The petitioner owns a bus bearing No.AP-24U-4464. He approached the respondents, to place the bus at their disposal. An agreement was entered into, between the petitioner and the respondents, on 12.5.2001, whereunder, it was agreed that the bus of the petitioner

would be taken on hire, by paying Rs.8-48 ps, per kilometer. It is not necessary to refer to various other conditions, except clause 4(1) of the agreement, whereunder the respondents were under the obligation to provide a guaranteed kilometerage 6000 K.Ms, per month, for the petitioner. 5 days thereafter, first respondent issued proceedings dated 17.5.2001, directing that the bus of the petitioner shall ply, on the route from Khammam to Pangidi. The distance to be covered by the bus, in 12 single trips, was stipulated as 336 KMs. The petitioner started plying the bus, in terms of the agreement, and was being paid the charges therefor.

The petitioner doubted the accuracy of the distance covered by the bus, on each day. According to him, the actual distance for the 12 single trips, on the said route, would be 348 KMs. Complaining that his grievance for survey of the route was not being redressed, the petitioner filed W.P.No.24262 of 2004, with a prayer to declare the proceedings, dated 5.10.2004, issued by the respondents, as illegal and arbitrary, and to direct the respondents to release the difference amount. The writ petition was disposed of on 7.12.2004, directing that the first respondent shall cause a survey of the route and determine the distance between Khammam and Pangidi. The resurvey revealed that the actual distance was 334.6 K.Ms. The petitioner assails the finding in the resurvey, and contends that the actual distance is 348 KMs. This writ petition is filed for a writ of mandamus, declaring the action of the respondents in not paying the amounts to the petitioner, as per the actual distance covered by his bus, as illegal and arbitrary, and for a direction to the respondents to pay the difference amount.

Sri Kowturu Vinaya Kumar, learned counsel for the petitioner, submits that the agreement provides for payment of Rs.8.48 Ps. per Kilometer, and the actual distance covered by the bus, on each day, is 348 K.Ms. He contends that fixation, as well as redetermination of the distance on the route, is in correct.

Learned Standing Counsel for the Corporation, on the other hand, submits that the relationship of the parties is governed by the terms of contract, and at the inception itself, the petitioner was informed of the distance to be covered by the bus. He contends that if the petitioner entertained any doubt, as to the same, he ought to

have verified it, before the contract was given effect to, and that it is not open to the petitioner, at this stage, to raise the present dispute.

The respondents hired the bus of the petitioner, through an agreement dated 12.5.2001. The salient features of the agreement, insofar as they are relevant for the purpose of the case, have already been referred to in the preceding paragraphs. On 17.5.2001, the second respondent issued proceedings, through which the route on which the bus shall ply, was indicated, and the distance, together with the number of trips, was stipulated. It is stated as 336 K.Ms, with 12 single trips, between Khammam and Pangidi. The petitioner did not raise any objection, be it as to the distance, or the number of trips. After about three years, he started claiming that the actual distance is more than 336 K.Ms., and made claim for the alleged difference of the amount. W.P.No.24262 of 2004 was filed, when his request was not acceded to. This Court disposed of the writ petition, with a direction to the respondents, to conduct survey of the route. The survey, so conducted, disclosed that the actual distance was marginally less than what was stipulated under the proceedings dated 17.5.2001. The petitioner, however, stuck to the stand that the distance is 348 K.Ms.

It is not in dispute that the relationship of the parties is governed by the terms of contract, as well as ancillary proceedings. The rates at which the hire charges are to be paid, and the distance for which the charges would be paid for each day, were clearly indicated, much before the petitioner started plying his bus. If at all, he entertained any doubt, as to the accuracy of the distance on the route, he ought to have verified the same, before the actual contract commenced. At any rate, the law presumes the existence of *consensus ad idem,* between both the parties. It is impermissible for one of the parties, to retreat from the terms of the contract, at a later point of time. The only circumstance, under which the petitioner could have resiled from his obligations under the contract, or claimed any benefit over and above what is provided for under the agreement; was by pleading the factors, such as, misrepresentation, undue influence, fraud, coercion, etc. Even where these factors exist, by their very nature, they have to be pleaded in a properly constituted suit, and established by leading evidence. Mere assertion by one party and denial by the other would not be sufficient for this court to undertake adjudication into such aspects. The aggrieved parties have to work out their remedies in a civil court.

With a view to redress the grievance of the petitioner, this Court has directed the respondents, to undertake a survey of the route. The survey, so conducted, reveals that the distance is somewhat less than what was stipulated under the proceedings, dated 12.5.2001. Thereby, a finding on a question of fact had emerged. The petitioner participated in the exercise. It is not open to him, to assail the finding of fact, in a writ petition. At any rate, the contract between the petitioner and the respondents is such that none of them can claim their rights, out side the terms of the agreement.

A situation may, in fact, emerge that the bus be required to ply the distance, more or less than what emerges actually, on physical verification. This uncertainty looms large. Occasions may arise where a longer distance may have to be covered, on account of traffic jams, or damages to road, restrictions as to one way, on the concerned route. It is for this reason that a definite distance is stipulated in the contract itself, than leaving it to the measurement for each trip on every day. Once the petitioner was informed of the distance, for which he will be paid, much before the bus was kept at the disposal of the respondents, it is not open to him to plead anything contrary to it. In fact, he is estopped from doing so.

For the foregoing reasons, the writ petition is dismissed. There shall be no order as to costs.

(L.NARASIMHA REDDY, J)

Dt. .9.2005

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L.R. copy to be marked.

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